No. 15,796

United States Court of Appeals

For the Ninth Circuit

G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, Trustees of John W. Smeed Estate,

Appellants,

vs.

Sam Wahyou, Diamond-S Ranch Co., Sam Wahyou, K. R. Nutting and Thomas G. Lee, as Trustees for the assets of Diamond-S Ranch Co., Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon and Herbert Jang,

Appellees.

Appeal from the United States District Court for the District of Nevada.

APPELLEES' BRIEF.

John S. Halley,
15 E. First Street, Reno, Nevada,
Forrest E. Macomber,
711 Bank of America Building,
Stockton, California,
Attorneys for Appellees.

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APPELLEES' BRIEF.

STATEMENT OF THE CASE.

Appellants' statement of the case is in error in several respects.

At Page 8, Paragraph 2, of Appellants' Brief, they state that following the voluntary dissolution of the Diamond-S Ranch Co., on September 7, 1950, the

Directors * * * did not wind up the affairs of the corporation and distribute the assets as required to do by the laws of Nevada. The laws of Nevada specifically provided that the corporation could renew and revive its corporate charter and said renewal or revivor could be effective as of the date it filed its dissolution, and that was done in this case. (Exhibit 9, 1 T 141.)

In the first paragraph of Page 9 of Appellants' Statement of Facts, they state that on September 18, 1950, this Pledge Agreement *was replaced* with a new pledge executed by Corbari to the Bank of America. The second Pledge Agreement was not to replace the first Pledge Agreement but merely extended the Pledge Agreement executed by Corbari to the Bank of America to cover additional obligations of Corbari's. (Exhibits 1 and 2, 1 T 130.)

In addition to the matters set forth in Appellants' Statement of Facts, Appellees direct this Court's attention to the fact that Corbari was long in default of his payments to the Bank of America and the Bank had made numerous demands upon Corbari to pay off the note or it would sell his 310 Shares of stock which he had pledged to secure the payment thereof. (Exhibits 14, 15 and 16, 1 T 132.) Likewise, long before Wahyou purchased the Corbari note and the pledged security from the Bank of America, Appellants had notice that the Corbari stock was pledged to the Bank of America to secure a loan owing by Corbari to the Bank and were given an opportunity to pay off that loan and secure Corbari's

stock to secure the indebtedness owing by Corbari to Appellants (Exhibit 17, 1 T 132 and 1 T 141), but this Appellants refused to do.

PRELIMINARY STATEMENT.

In the prior decision of this Court in this same case, this Court disposed of all of the contentions made by Appellants and sent the case back to the lower Court for the narrow and limited purpose "for a finding as to whether Wahyou has sustained such a burden of proof on the basis of the evidence presently in the record or any additional evidence the parties may offer." However, it will be observed that this Court, in reply to Appellants' assertion that Wahyou was in a fiduciary relationship toward Appellants or Corbari, stated:

> "Corbari's interest was not part of the trust over which Wahyou was a trustee. The Nevada Legislature imposed the duties of a trustee upon the directors of a dissolved corporation with regard to their powers to liquidate the corporate assets, pay creditors and distribute the net proceeds to the shareholders. The Nevada statutes make no mention of any powers over a shareholder's interest, and it seems clear the corporate liquidators have no control over how a particular shareholder deals with his interest.
>
> The reasons why a trustee may not purchase trust property at a foreclosure sale are not applicable to what was done by Wahyou in this case."
>
> "On the other hand, a trustee has no duty to buy one beneficiary's interest for the benefit of other

beneficiaries: Wahyou was in no position to decide whether Corbari's interest should be redeemed or sold. Whether Wahyou made a low or a high bid for Corbari's interest did not affect the dissolved corporation's financial position. Wahyou, as a result of the purchase, did not occupy a personal position adverse to his duties as a trustee. He was already both a shareholder-beneficiary and a director-trustee."

ARGUMENT IN REPLY TO APPELLANTS' SPECIFICATIONS OF ERRORS.

Appellants' thirteen Specifications of Errors are but thirteen different ways of saying that the Findings of Fact made by the trial Court are not supported by the evidence.

Appellants, however, do not comply with Rule 18 (d) of the Rules of the United States Court of Appeals for the Ninth Circuit in that they do not "state as particularly as may be wherein the Findings of Fact and Conclusions of Law are alleged to be erroneous." Instead of abiding by said Rule, the Appellants pick out isolated portions of the evidence most favorable to Appellants and argue that the Court committed error in failing to find in favor of Appellants on the basis of those selected portions of the evidence that Appellants find most favorable to themselves.

Rule 52(a) of the Federal Rules of Civil Procedure provides as follows:

"Rule 52. Findings by the Court.

(a) Effect. * * * Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

In:

Fremont Cake & Meal Co. v. Wilson & Co., 183 Fed. 2d 57,

it was stated that findings of the trial court are presumptively correct. In:

Rogers v. Union Pac. R. Co., C.C.A. 9th, Sept. 1, 1944, 145 Fed. 2d 119,

it was stated that a trial court's fact finding, supported by substantial evidence, must be accepted as correct on appeal. In:

Ashton v. Sentney, C.C.A. 9th, Dec. 5, 1944, 145 Fed. 2d 719,

it was stated that demeanor of witnesses and their sincerity and candor is for trial tribunal. In:

Remington Rand Inc. v. Societe Internationale, etc., C.C.A.-D.C., Mar. 29, 1951, 188 Fed. 2d 1011,

it was stated that where trial involves disputed factual issues, the findings of fact by the trial court should not be set aside unless clearly erroneous and due regard should be given to the opportunity of the trial court to judge the credibility of the witnesses. See, also:

Chisholm v. House, C.C.A. 10th, July 26, 1950, 183 Fed. 2d 698,

wherein the Court stated:

"(4) With commendable care, the trial court took up and separately considered each loan to determine whether or not it was prudently made, and if not, whether the estate had suffered a loss as a result of such imprudency. It found and concluded that most of the challenged loans on the real estate were prudently made, and absolved the trustees and surety from liability thereon. Its analysis and conclusions on these transactions are not clearly erroneous, and they must stand."

See, also:

United States v. Oregon State Medical Society, 343 U.S. 326, 96 L. Ed. 978, 72 S. Ct. 690,

which was a case very much like the one at bar in that the complaining party created a vast record of cumulative evidence as to long past transactions, motives and purposes, the effect of which depends largely on credibility of witnesses, and in the *Oregon State Medical Society* case Justice Jackson, who delivered the Opinion of the Court, stated:

"While Congress has provided direct appeal to this Court, it also has provided that where an action is tried by a court without a jury 'findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.' Rule 52(a), Fed. Rules of Civ. Proc. There is no case more appropriate for adherence to this rule than one in which the complaining party creates a vast record of cumulative evidence as to long-past transactions, motives, and purposes, the effect of which depends largely on credibility of witnesses."

See, also:

United States v. Yellow Cab Co., 338 U.S. 338, 94 L. Ed. 150,

which states:

"Only last term we accepted the view then advanced by the Government that for triers of fact totally to reject an opposed view impeaches neither their impartiality nor the propriety of their conclusions. We said, 'We are constrained to reject the court's conclusion that an objective finder of fact could not resolve all factual conflicts arising in a legal proceeding in favor of one litigant. The ordinary lawsuit, civil or criminal, normally depends for its resolution on which version of the facts in dispute is accepted by the trier of fact. . . .' National Labor Relations Board v. Pittsburgh SS Co. 337 US 656, 659, 93 L ed 1602, 1605, 69 S Ct 1283.

Rule 52, Federal Rules of Civil Procedure, provides, among other things:

'Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.'

Findings as to the design, motive and intent with which men act depend peculiarly upon the credit given to witnesses by those who see and hear them. If defendants' witnesses spoke the truth, the findings are admittedly justified. The trial court listened to and observed the officers who had made the records from which the Government would draw an inference of guilt and concluded that they bear a different meaning from that for which the Government contends."

After the mandate of this Court came down, the trial Court heard such evidence as both sides cared to present, and after hearing the cause was submitted and the trial Court made its Findings of Fact and Conclusions of Law, which are set forth at length in the transcript. (2 T 5 to 17.) The essential Findings are as follows:

> "14. That at the time said document of October 31, 1950, was executed and delivered, and for some months prior thereto, Plaintiffs had notice of and knowledge that Defendant Archie E. Corbari's 310 shares of the Common Capital Stock in Diamond-S Ranch Co. had been pledged to the Bank of America N. T. & S. A., Hunter Square Branch, Stockton, California, in order to secure the Corbari's indebtedness to said Bank." (2 T 14.)
>
> "15. That it is true that after the Defendant Sam Wahyou purchased the Defendant Archie Corbari's note from the said Bank of America and the Defendant Archie Corbari failed to pay said note unto the Defendant Sam Wahyou, and by reason of the nonpayment of said note to the Defendant Sam Wahyou, the said Defendant Sam Wahyou caused said stock to be sold under the terms of said pledge agreements and pursuant to the laws of the State of California relating to sales of pledged property, and on May 21, 1951, said 310 shares of the Common Capital Stock of Diamond-S Ranch Co., the subject matter of said pledge, were sold at public auction at the Main St. Entrance to the County Courthouse in the City of Stockton, County of San Joaquin, State of California, in accordance with the laws of the

State of California, and said 310 shares were purchased by Gordon J. Aulik as agent for Sam Wahyou and in the name of Sam Wahyou for the sum of $5,500.00.

16. That it is true that the said sale was fairly made in accordance with the laws of the State of California relating to the sale of pledged property and fairly conducted, and the Defendant Sam Wahyou has sustained the burden of proving and has proven that there was no fraud or misrepresentation or other unfair means involved in the purchase of said shares by the Defendant Sam Wahyou, and it is true that the transaction whereby the said Defendant Sam Wahyou acquired the Defendant Archie E. Corbari's stock was fair and that the reasonable value of the shares of stock at the time of the purchase thereof by Defendant Sam Wahyou at said sale on May 21, 1951, was nil and that the said shares after the date of purchase and up to the time of the trial of this action were of no value whatsoever.

17. That it is true that insofar as the value of said stock was concerned as of the date of its sale at public auction and its purchase by Defendant Sam Wahyou on May 21, 1951, there were no facts within the knowledge of the said Defendant Sam Wahyou that were not equally available to Plaintffs or the Defendant Archie E. Corbari." (2 T 15 and 16.)

At this point, Appellees desire to point out that the Findings show that Wahyou sustained the burden of proving that the transaction whereby he acquired Corbari's stock was fair.

Burden of proof means persuading the mind of the trier of fact that the truth of a particular matter lies in favor of the person upon whom falls the first duty of going forward with the evidence. This duty is a duty toward the judge and the judge rules against the party if it is not satisfied. When the judge has ruled that sufficient evidence has been introduced, the duty has then ended. See:

Wigmore on Evidence, Vol. 9, Third Edition, Par. 2487, Pages 278 and 279.

The trier of fact, in this case the trial Judge, was satisfied with the proof produced by Appellees and thus found in their favor.

Although Appellants have failed to sustain their burden of pointing out to this Court exactly wherein in the record the Findings of Fact and Conclusions of Law are alleged to be erroneous, Appellees feel it is their duty to apprise this Court of those portions of the record that do clearly and unequivocally sustain the Findings of Fact and Conclusions of Law of the trial Court.

It was stipulated that the Court could take judicial notice of the laws of California dealing with pledge sales and foreclosure of pledges. That law is contained in Sections 2986 to 3011, inclusive, of the Civil Code of California, and Sections 692 and 694 of the Code of Civil Procedure of California. Section 3010 of the Civil Code of California provides as follows:

"§ 3010. (Pledgee or pledge-holder may purchase.) Whenever property pledged is sold at

> public auction, in the manner provided by section three thousand and five of this code, the pledgee or pledge-holder may purchase said property at such sale."

and the Code of Civil Procedure Sections provide essentially that notice of the sale must be given by posting written notice of the time and place of sale in three public places in the city where the property is to be sold for not less than five nor more than ten days. The Affidavit of the Constable as to the posting of the notice was admitted in evidence (Exhibit 5), Notice of the sale was admitted in evidence (Exhibit 3), Affidavit of Forrest E. Macomber as to the sale was admitted in evidence (Exhibit 2) (1 T 131). Gordon J. Aulik, who purchased the Corbari shares at the public auction sale, testified fully with respect thereto (2 T 71) and the Court made an appropriate Finding that the sale was fairly made in accordance with the laws of the State of California relating to sales of pledged property and fairly conducted. Appellants in their Brief cite 3 Stanford Law Review 744 and a citation from 41 Am. Jur. 649, in which Appellants contend that it is a general rule of law that a pledgee is incapacitated from becoming a bidder at the sale. The note in 3 Stanford Law Review Page 743 specifically points out that the statutes of California permit the pledgee to purchase at the sale (at Page 745). The law only demands on the pledgee good faith in dealing with the pledged property. Appellants attack the validity of the sale upon the

ground that Wahyou violated his fiduciary position as a pledgee in knowingly purchasing the stock for many times less than its fair and true value. The evidence before the trial Court as to the value of the stock consisted of showing the book value of the stock for the years ending December 31, 1950, to 1956, inclusive. These were the only dates upon which Balance Sheets were made up (Defendants' Exhibit B, 2 T 44 and 46). That Balance Sheet shows that the assets of Diamond-S Ranch Co. for the year ending December 31, 1950, were, in round figures, $142,000.00 (book value) and the liabilities, exclusive of Capital Stock, were $144,000.00, making the common stock worth $2,000.00 less than nothing at book value. Appellants contended that the Balance Sheet was in error in that the ranch land and improvements were of a greater or higher value than the book value, and this point we will discuss later in this Brief. The same Balance Sheet showed that at the year ending December 31, 1951, the assets of the Diamond-S Ranch Co. had a book value of $303,000.00 and the liabilities, exclusive of Capital Stock, were $310,000.00, and the Capital Stock was worth some $7,000.00 less than nothing. This same condition prevailed so that at the end of 1952 the Capital Stock was worth approximately $66,000.00 less than nothing; 1953, $389,000.00 less than nothing; 1954, $445,000.00 less than nothing; 1955, $720,000.00 less than nothing; and 1956, $878,000.00 less than nothing.

With respect to the value of the land and improvements, the book values were as follows:

Dec. 31, 1950—$137,219.14
Dec. 31, 1951—$129,591.12
Dec. 31, 1952—$146,606.04
Dec. 31, 1953—$159,918.27
Dec. 31, 1954—$195,076.20
Dec. 31, 1955—$216,820.62
Dec. 31, 1956—$229,162.32

Considerable testimony was introduced as to the value of the land and improvements as of May 21, 1951, which was the date that the pledge sale was held. Following is a portion of that evidence, which Appellees maintain adequately supports the Findings of Fact and Conclusions of Law made by the trial Court:

KENNETH R. NUTTING, a witness produced by Appellees, testified that on or about June 15, 1950, he acquired 489 Shares, or approximately 32% of the stock of Diamond-S Ranch Co., for $20,000.00, but upon condition that the $20,000.00 be reinvested in the ranch as operating capital (2 T 28) and that on or about August 30, 1953, he gave 104 Shares free gratis to Mr. Hogue (2 T 30) to the end that Wahyou, Hogue and Nutting would each own ⅓ of the stock. He described the physical condition of the ranch in 1951 (2 T 31), and that in his opinion the ranch was worth approximately $150,000.00 in 1951, and he based that opinion partly upon the fact that ranches in Nevada sell for $150.00 for each head of cattle that it is capable of supporting. (2 T 32.) The ranch itself would carry a total of 300 head of cattle and the Taylor Grazing Rights and leased land would carry

an additional 700 head of cattle or animal units (2 T 36); that his valuation of $150,000.00 for the ranch was based upon his estimate that it would carry a total of 1,000 head on the ranch as well as on the leased land and Taylor Grazing Rights (2 T 37); that if the ranch, together with the Taylor Grazing Rights and leased land, carried less than 1,000 head, he would reduce the value accordingly (2 T 37); that the leased land was on a lease for one year only (2 T 37 and 38) and that if either the Southern Pacific Company or Milham, the owners of the land, did not care to renew the lease, they would be under no obligation to do so. (2 T 39.)

MR. FRANK H. HOGUE, a witness on behalf of Appellees, testified as follows: He owns one-third of the outstanding stock of Diamond-S Ranch Co. (2 T 40.) He acquired 104 shares from Mr. Nutting in 1953, for which he paid nothing. He paid Wahyou $35,000.00 for an additional 500 shares on condition that the $35,000.00 should go into financing the ranch. (2 T 41.)

SAM WAHYOU testified that at the time of sale of the Corbari stock at public auction on May 21, 1951, Mr. Corbari was a Director of the Corporation (2 T 66); he, Corbari, was operating the ranch at that time as superintendent (2 T 66); Corbari owed him money at that time (2 T 66); the Bank of America was threatening to foreclose the pledge on Corbari's stock (2 T 67); Corbari asked him to buy the stock so the Bank would not foreclose it (2 T 67); he arranged with the Bank to pay for the stock and

his lawyer, Macomber, arranged for the assignment of the Corbari note and the pledge of the stock to Wahyou (2 T 68); that at the time he bought Corbari's stock he felt that the ranch had a future and that the stock was worth more than $5,000.00 and he would not want somebody outside to hold the stock, that is why he bought it. Corbari owed him money and he thought it was a pretty fair buy for what he paid for it so he bought it (2 T 68); that he expected to make money on the purchase of the Corbari stock or he would not have bought it but he did not make any money as a result of that purchase (2 T 69); he has tried to sell the ranch many times since 1948, 1949, 1950 and up to date and he has been unable to get anyone to purchase the ranch (2 T 74); that after 1951 they spent a great deal of money fixing up the ranch (2 T 80); his financial statement to the Bank to secure a loan as of December 31, 1955, shows his stock in the Diamond-S Ranch Co. to be of no value. (2 T 85 and 86.)

MR. CHARLES SEWELL, a witness on behalf of the *Appellants,* testified that his appraisal is based in part upon the number of animal units the ranch would carry in 1951 (2 T 99); he further testified that it is usual to take into consideration in buying or selling Nevada ranches the animal carrying capacity, or A.U.'s (animal units) (2 T 100); he believes that the ranch is worth $200.00 per animal unit (2 T 100), although he sold a ranch in this particular area of the Diamond-S Ranch last Fall for $150.00 per animal unit. (2 T 101.) He further testified that

if the leases were terminated, some of the value would be gone. (2 T 106.)

MR. HARLEY M. McDOWELL, a witness on behalf of the *Appellants,* testified that in his appraisement of the value of the ranch, he considered the carrying capacity of the ranch (2 T 114); the leased lands were leased for a period of only one year and the use of the lands from year to year is dependent entirely upon renewing those leases. (2 T 126.)

MR. JACK UTTER, a witness on behalf of *Appellants,* testified that he based his appraisement on so much per animal unit carrying capacity (2 T 139); he figured the ranch would run about 1,500 head at $200.00 a head (2 T 139-140), although he can't say how many head of cattle the ranch actually carried in 1951 or how many head it could carry (2 T 140); the asking price of the CS Ranch is $165.00 per animal unit (2 T 143); there is nothing about the Diamond-S Ranch that was any different from any cattle ranch. (2 T 145.)

It was stipulated that the animal carrying capacity on the Federal range land was 1,771 aum's, or animal unit months, and 1,921 aum's upon the leased land, or a total of 3,692 animal unit months altogether, and that for a five-month period.

Mr. Nutting's testimony that the ranch itself, without the leased land or the Taylor Grazing Rights, would carry 300 head of cattle, would give a valuation to the ranch as follows:

> 300 head of cattle x $150.00 per head, would give the ranch a value of $45,000.00 and no more.

At $200.00 per animal unit, the ranch would be worth $60,000.00. In addition to this, the ranch was worth something by reason of the Taylor Grazing Rights and leased land grazing rights; however, it must be remembered that the leased land rights were subject to being cut off by failure to renew the lease at any time, and little value could thus be placed upon the leased land rights. The Federal range land, or Taylor Grazing Rights, consisted of 1,771 aum's, or animal unit months. This 1,771 divided by 12 months, means that the Federal range land was capable of grazing 147½ head of cattle per month all year 'round, or twice that number for a six-months' period, etc. It was stipulated that the leased land would carry 1,921 aum's, or animal unit months, or, worked another way, it would carry 1,921 divided by 12, or 160 head of cattle each month for 12 months. All of the witnesses who testified to value agreed that it would be based upon animal units or the animal carrying capacity of the ranch and its grazing rights. The Court was undoubtedly familiar with the value of cattle ranches in Nevada and knew that the principal test of the value of a cattle ranch in Nevada is based upon the carrying capacity and that as Appellants' as well as Appellees' witnesses testified, the ranch would be worth somewhere between $150.00 and $200.00—one of Appellants' witnesses testified to $225.00—per animal unit. At the rate of $150.00 per animal unit, allowing 300 head animal carrying capacity or animal units for the main ranch and 160 animal units for the leased land and 147 animal units for the Federal range land, would make a total of 607 animal units

altogether, and at $150.00 per head this would make the ranch worth $91,050. It was the province of the trial Court to determine the true value of the Diamond-S Ranch, and this the trial Court did, and after such determination the trial Court has found specifically that the value of the Corbari shares of stock at the time of the purchase thereof by Wahyou on May 21, 1951, was nil—of no value whatsoever, and that since that time, as of December 31, 1956, the book value of the shares was $878,000.00 less than nothing.

In Point One of their argument, Appellants cite a number of California Civil Code Sections and citations from other authorities which have to do with trustees of an express trust, but they are elemental rules of the law of trusts and throw no light upon the case at bar. At page 16 of their Brief, Appellants state that the question before the Court is, was the burden of proof sustained by Wahyou. That was a matter for the determination of the trial Court after a consideration of all of the evidence, and after the trial Court had accorded due weight to such of the evidence as it thought it should have, and the trial Court concluded that the answer to this question was "yes", and unless those Findings are clearly erroneous, this Court will not overturn the trial Court's Findings.

At page 17 of Appellant's Brief, Appellants state that the certificate of stock which Wahyou purchased from the Bank had been pledged to the Bank, not to him. This is true, but the Bank had assigned the note and the pledged property to Wahyou for a valuable

consideration, to-wit: the sum of $5,500.00. Appellants likewise state that there was no evidence that Corbari or Smeed had ever been notified of the time and place of the sale, but Notice of Non-Performance and Notice of Time and Place of Sale was expressly waived by Corbari. See Pledge Agreement to the Bank of America. (Exhibit 1, 1 T 130.) Smeed, of course, had known for many months that Corbari had pledged this stock to the Bank of America for a loan and was unwilling to pay off the balance due to the Bank as Wahyou had done and secured Corbari's stock to secure the indebtedness owing to it by Corbari. Appellants likewise state that Attorney Macomber posted the Notices of Sale. That is not true. The Notices of Sale were posted by the Constable. (Exhibit 5, 1 T 131.) Appellants speak of undue influence and state that there was no evidence that Wahyou told Corbari that he believed the stock was worth more than he was going to pay for it, but Corbari was a Director of the Corporation at the time of the sale, he was the Manager and in charge of the operation of the ranch, and he was in a position to know as much about the value of the stock, if not more, than any other person, and he had expressly waived notice of time and place of sale when he signed the General Pledge Agreement to the Bank of America.

The next point made by Appellants is that Wahyou must pay fair and adequate consideration for the stock, and their argument seems to be that if the stock was worth any more than Wahyou paid for it

he would have to pay the difference between what he paid for it and what it was worth to Corbari or Corbari's assignee, but that argument falls for two (2) reasons: One, that it not the law and the cases do not so hold; and, two, the Court found that the value of the stock at the time of its purchase by Wahyou was less than nothing, and that determination is adequately supported by the evidence, as hereinbefore set forth in detail, and that by the end of 1956 the liabilities of the Diamond-S Ranch Co. exceeded its assets by some $878,000.00.

The next point made by Appellants in their Brief is that Wahyou stood in the shoes of the Bank of America, being charged with the same duties respecting the pledge as was the Bank, and could not take advantage of Corbari. We agree wholeheartedly with this statement, and if Wahyou had not purchased the note and collateral from the Bank of America and it had sold Corbari's stock as did Wahyou, there could be not the slightest argument that the Bank of America was entitled to sell the stock and buy it in themselves for the amount owing upon it to them.

CONCLUSION.

We submit that the determination of whether Wahyou acted fairly in the sale of the pledged stock and the purchase of it and whether he sustained the burden of proof of so showing was for the determination of the trial Court, and that the trial Court has determined all of these matters in favor of Appellees

and that the Findings of Fact are extremely well supported by the evidence. We likewise respectfully suggest that this appeal has no merit whatsoever and was taken for the purpose of harassing and annoying Appellees.

Dated, March 17, 1958.

Respectfully submitted,

JOHN S. HALLEY,

FORREST E. MACOMBER,

Attorneys for Appellees.